

LOYAL DEE GRIGGS

IBLA 80-186

Decided May 15, 1980

Appeal from decision of the Oregon State Office, Bureau of Land Management, holding two lode mining claims abandoned and void. 3833 (OR).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Assessment Work
-- Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intention to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Oct. 22, 1979, and the service fee therefore is not paid to BLM until Nov. 13, 1979, the recordation date of the notice is Nov. 13, 1979.

2. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Recordation of
Mining Claims and Abandonment -- Mining Claims: Recordation

Under 43 U.S.C. § 1744(b) (1976) and 43 CFR 3833.1-2, the owner of an unpatented mining claim located before Oct. 21, 1976, must file a copy of the official record of the notice or certificate of location of the claim with the proper BLM office on or before Oct. 22, 1979, or the claim will be deemed conclusively to be abandoned and void under 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4. A notice relating to an unpatented mining claim located before Oct. 21, 1976, which is filed with BLM on Nov. 13, 1979, is not timely filed.

APPEARANCES: Loyal Dee Griggs, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Loyal Dee Griggs appeals from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated November 16, 1979, which declared the Clear One and Clear Two lode mining claims null and void for failure to file on or before October 22, 1979, copies of the official record of the location notices for the named claims, as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and the pertinent regulation, 43 CFR 3833.1-2.

The record shows that on October 22, 1979, Griggs submitted to BLM copies of the notices of location for the two claims at issue, as well as affidavits of labor for 1979, but no payment of the required service fee of \$5 per claim was included. The documents were returned to Griggs, who resubmitted them together with a check for \$10 on November 13, 1979.

[1] Regulation 43 CFR 3833.1-2 requires that for mining claims located prior to October 21, 1976, a copy of the official record of the location notice or certificate must be submitted to the proper office of BLM within 3 years, i.e., on or before October 22, 1979. The Clear One and Clear Two claims were located April 26, 1975. Regulation 43 CFR 3833.1-2(d) states that each claim filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the service fee there is no recordation. Thus, as the service fee for the notices of the Clear One and Clear Two mining claims was not paid until November 13, 1979, it must be held that the

date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date. Joe B. Cashman, 43 IBLA 239 (1979).

[2] Section 314(b) of FLPMA, 43 U.S.C. § 1744(b) (1976), requires the owner of an unpatented lode or placer mining claim located prior to October 21, 1976, to file a copy of the official record of the notice or certificate of location for the claim in the BLM office designated by the Secretary of the Interior within the 3-year period following October 21, 1976. Section 314 also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner. Appellant did not file the documents required by statute and regulation with the proper BLM office on or before October 22, 1979. Such failure to comply must result in a conclusive finding that the claims have been abandoned and are void. 43 U.S.C. § 1744 (1976); 43 CFR 3833.4. A notice of location relating to an unpatented mining claim located before October 21, 1976, which is received by a BLM office on November 13, 1979, is not timely filed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge

